

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JAMES B. MORRIS,

Plaintiff,

vs.

CADENCE DESIGN SYSTEMS, INC.,
dba Quickturn, a Cadence Company,

Defendant.

Civil No. 04-877-AA
OPINION AND ORDER

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AIKEN, Judge:

Defendant moves for summary judgment pursuant to Fed. R. Civ. P. 56 alleging that plaintiff does not have standing to assert his claims. Defendant's motion is granted and plaintiff's complaint is dismissed.

STATEMENT OF FACTS

On June 17, 2004, plaintiff James Morris brought this action against defendant Cadence Design Systems, Inc. (Cadence) alleging three causes of action arising out of a terminated contract between Cadence and Simutech Corporation (Simutech). Specifically, plaintiff alleges that Cadence breached certain provisions of a contract that was terminated in 2001, that Cadence breached the covenant of good faith and fair dealing arising out of that contract, and that Cadence misappropriated some trade secrets belonging to Simutech. In each of his causes of action, plaintiff alleges that on November 5, 1999, Cadence entered into a Product Purchase, Manufacturing and Distribution Agreement (the "Agreement") with Simutech through which Cadence was given rights to purchase a hardware prototyping system and to resell that system, sometimes exclusively, in various markets, and by which Simutech granted Cadence a manufacturing license for

related products.

Plaintiff is not a named party to the Agreement at issue. The express terms of the Agreement prohibit either of the contracting parties (Cadence and Simutech) from assigning or transferring any rights under the Agreement without the express written consent of the other party, subject to some exceptions. There is no dispute that Cadence did not consent to any such assignment or transfer.

STANDARDS

Fed. R. Civ. P. 56 - Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Substantive law on an issue determines the materiality of a fact. T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Assoc., 809 F.2d 626, 630 (9th Cir. 1987). Whether the evidence is such that a reasonable jury could return a verdict for the nonmoving party determines the authenticity of a dispute. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

The moving party has the burden of establishing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett,

477 U.S. 317, 323 (1986). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and identify facts which show a genuine issue for trial. Id. at 324.

Special rules of construction apply when evaluating summary judgment motions: (1) all reasonable doubts as to the existence of genuine issues of material fact should be resolved against the moving party; and (2) all inferences to be drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. T.W. Electrical, 809 F.2d at 630.

Standing

Standing is "an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1995). Like subject matter jurisdiction, standing must be considered by federal courts even if the parties fail to raise it. United States v. Hays, 515 U.S. 737, 742 (1995). A plaintiff must demonstrate standing separately for each form of relief sought. Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., 528 U.S. 167, 184 (2000). The burden is on the plaintiff who seeks the exercise of jurisdiction in his or her favor to "clearly . . . allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." Hays, 515 U.S. at 743.

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DISCUSSION

_____Cadence first asserts that plaintiff lacks standing to enforce the Agreement because plaintiff failed to obtain Cadence's consent to the assignment of the Simutech/Cadence Agreement. Plaintiff does not dispute that he did not obtain Cadence's consent to the assignment.

Cadence next asserts that plaintiff lacks standing because he failed to acquire "all, or a substantial portion of [Simutech's] assets, product lines or businesses," and thus does not fall within the "exception" found in the Agreement which allows transfer without obtaining the other party's consent.

_____The Assignment clause, found in the Cadence/Simutech Agreement and referenced by both parties, states as follows:

Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable . . . However, the foregoing notwithstanding, an assignment by either party in connection with the transfer of all, or a substantial portion of its assets, product lines or businesses, or by reason of acquisition, merger, consolidation or operation of law shall not require the other party's consent. Subject to the above, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Cadence/Simutech Agreement, § 15.4

_____This court initially granted defendant's motion to dismiss plaintiff's complaint due to lack of standing finding that:

[e]ven reading the complaint in the light most favorable to the plaintiff, it is unclear whether the alleged "agreement" between Ravesim and plaintiff which entitles plaintiff to 'pursue all claims and

causes of action against defendant' qualifies under the Cadence/Simutech Agreement exception. Specifically, it is unclear whether plaintiff's alleged "agreement" with Ravesim was actually a transfer of all, or a substantial portion of Ravesim's assets, or was a acquisition, merger, consolidation or operation of law," and therefore falls within the exception which allows transfer without consent.

Opinion and Order, Nov. 2, 2004, p. 7.

The court then granted plaintiff leave to file an amended complaint to allow plaintiff an opportunity to satisfy the standing requirement. On November 23, 2004, plaintiff filed an amended complaint alleging in part:

At some point, RaveSim became the owner of all of Simutech's assets, including all claims and causes of action Simutech had against defendant. Thereafter, Ravesim and plaintiff entered into an agreement that, expressly or by operation of law, entitles plaintiff to pursue all claims and causes of action against defendant which either Simutech or Ravesim previously had or now has, with the right to assert and recover damages for such claims against defendant for the benefit of Ravesim and plaintiff At the time of the RaveSim/Plaintiff Agreement, and at all times thereafter, there did not exist any Simutech physical assets. Instead, the claims assigned or otherwise transferred under the Release constituted, and continue to constitute, a substantial portion of the Simutech assets.

Amended Complaint, ¶ 5.

____ Upon reviewing plaintiff's allegations liberally and in the light most favorable to plaintiff, the court found plaintiff's allegations in his First Amended Complaint sufficient to withstand a second Fed. R. Civ. P. 12(b)(6) motion filed by the defendant. The parties then stipulated, and the court ordered,

that discovery proceed only on the standing issue. Discovery on the merits was stayed pending this court's determination of standing. Upon completion of discovery on the standing issue, defendant filed the motion at bar.

Discovery revealed the following additional facts. In 2001, Simutech obtained a loan from Kirnaf Ltd., and as part of that loan agreement, Simutech pledged to Kirnaf a security interest in and a lien on all of Simutech's assets. In the Fall 2001, Kirnaf demanded payment, however, Simutech was unable to pay back the loan. Kirnaf then commenced foreclosure proceedings against Simutech and ultimately purchased all of Simutech's assets at a public auction. On November 13, 2001, Kirnaf contributed the Simutech assets it purchased, along with \$750,000 cash, to RaveSim in exchange for preferred stock, and RaveSim commenced operations.

At the time that Simutech was sold to Kirnaf, Simutech had several significant assets, including hardware and patents, which were valued at over \$2.1 million. All of these assets were transferred to RaveSim by Kirnaf. In addition to the Simutech assets, Kirnaf contributed \$750,000 cash to RaveSim, and RaveSim acquired other assets in connection with the commencement of its operations. Although no additional valuation was made of the RaveSim assets, RaveSim's corporate designee and former CFO detailed RaveSim assets in excess of \$3 million.

In November 2001, plaintiff sued RaveSim in Oregon state court in Multnomah County, Oregon. After a year of litigation, plaintiff and RaveSim resolved the lawsuit and executed a Settlement Agreement. Plaintiff testified in his deposition that his Settlement Agreement with RaveSim acts as the sole basis for his claim that he has standing to sue Cadence on behalf of RaveSim/Kirnaf.

The relevant paragraphs of the Settlement Agreement are as follows:

C. In consideration of Morris' agreement to dismiss with prejudice his Amended Complaint as to RaveSim/Kirnaf and Saud Ben Khudair, RaveSim agrees to assess and review whether or not a viable claim exists against Cadence Design Systems ("Cadence").

D. RaveSim/Kirnaf agrees to review and assess information provided by Morris regarding a claim against Cadence and to render an opinion regarding whether or not a viable claim against Cadence exists based upon the information provided to RaveSim/Kirnaf by Morris[.]

I. If RaveSim determines that the information provided by Morris is insufficient for RaveSim to pursue a claim against Cadence, RaveSim agrees to provide the information to an independent, neutral third-party mutually selected by the Settling Parties and located in Portland, Oregon, to provide an independent assessment of the claim against Cadence. As assessment of the claim by such neutral third-party will be made within 30 days of RaveSim's decision not to pursue a claim against Cadence. If the independent third-party assesses the information provided by Morris and determines that a viable claim exists against Cadence, RaveSim may re-evaluate whether to pursue its claim against Cadence and should RaveSim adhere to its initial decision not to pursue a claim against Cadence, RaveSim will assign its right to pursue such a claim against Cadence to Morris and Morris will have the right to pursue the claim and recover any damages from Cadence.

Murphy Depo., Ex. 17, p. 4-5 (attached to Declaration of Michael Sitzman).

The Settlement Agreement quoted above specifies that RaveSim would be obligated to assign a claim to plaintiff against Cadence if the following events took place: (1) plaintiff provided information on the claims he believed existed against Cadence to RaveSim; (2) RaveSim determined that it would not pursue a claim against Cadence; (3) the parties obtained an independent assessment from a neutral third party determining that a valid claim existed; and (4) RaveSim nevertheless, declined to bring suit against Cadence. The Settlement Agreement mandates that upon the occurrence of these four events, RaveSim would then assign a claim against Cadence to plaintiff.

Plaintiff did provide information to RaveSim that he believed supported a claim against Cadence. RaveSim reviewed that information and nevertheless declined to pursue such a claim. I find no evidence that conditions (3) and (4) as specified in the Settlement Agreement ever occurred. Following RaveSim's initial assessment as to whether to bring a claim against Cadence, there is no evidence that the parties ever pursued an independent, third-party assessment, therefore, RaveSim's final option to bring the claim did not mature. Consequently, RaveSim never assigned a claim to plaintiff against Cadence. Plaintiff testified in his deposition that he never

worked with RaveSim, Kirnaf or its counsel to select a mutually accepted third party to review his claim as required by the Settlement Agreement. Morris Depo., 89:8-12. Further, plaintiff concedes that he did not receive or obtain an assignment from RaveSim following the Settlement Agreement. Morris Depo., 64:22-65:1.

Plaintiff, however, argues that a formal assignment was not specified under the Settlement Agreement. Plaintiff relies on a February 2003, letter from RaveSim and Kirnaf's attorney notifying plaintiff that: "we write to notify you that after thorough and careful consideration, RaveSim and Kirnaf each have decided not to file a legal action against Cadence As set forth in the RaveSim/Morris [Settlement] Agreement, if you desire to commence an action in your own name, please have your attorney contact us regarding assignment, indemnity in favor of RaveSim and Kirnaf and other related issues." Plaintiff points out that the attorney did not inform plaintiff that RaveSim or Kirnaf had consulted, or intended to consult, an experienced third-party regarding its decision. Plaintiff argues that if Ravesim wished to have a third-party evaluate the claim against Cadence, it was required to promptly provide information to a third-party, so that the third-party could "provide an independent assessment" "within 30 days of RaveSim's decision not to pursue a claim against Cadence." RaveSim/Morris Settlement Agreement, p. 2,

¶ 1. Plaintiff argues that RaveSim's failure to seek a third-party assessment effectively assigned the Cadence claim to plaintiff "by operation of law."

Defendant disagrees and relies on RaveSim and Kirnaf's attorney's letter to plaintiff's attorney stating that they did not intend to file suit against Cadence and specifically directing plaintiff's attorney to contact their counsel regarding "assignment, indemnity in favor of Ravesim and Kirnaf and other related issues."

Several months later, in February 2004, Morris's attorney contacted RaveSim/Kirnaf's counsel stating that, "it is now urgent that the assignment be completed," and attached a form of assignment. A few days later, RaveSim responded:

Pursuant to the terms of the Settlement Agreement, Morris is not entitled to an assignment of any potential claim that RaveSim may have against [Cadence], absent a finding by a third party that a viable claim exists Although RaveSim and Kirnaf do not intend to commence an action against Cadence regardless of the conclusion reached following an independent assessment of the claims, RaveSim is not willing to assign worthless claims to Morris. As you know, it was after thorough and careful consideration that Ravesim and Kirnaf decided not to file a legal action against Cadence.

Hurley Decl., Ex. C (footnotes omitted, emphasis in original).

Finally, in August 2004, two months after plaintiff filed his initial Complaint, plaintiff's counsel wrote to RaveSim's counsel again requesting assignment and informing RaveSim/Kirnaf that an action against Cadence was filed. Counsel for RaveSim

responded:

Pursuant to the terms of the Settlement Agreement, Morris was not entitled to an assignment of any potential claim that RaveSim may have had against [Cadence] absent a finding by a third party that a viable claim existed. The primary purpose of the requirement that a third party assess the validity of potential claims was to ensure that any claim that Ravesim may have assigned to Morris had merit.

As we informed Morris's [previous counsel], it was after thorough and careful consideration that Ravesim and Kirnaf decided not to file a legal action against Cadence, and Ravesim was unwilling to assign any claim absent some type of third party assessment that a claim existed. In addition, as we informed [plaintiff's previous counsel], prior to executing any assignment of claims, the terms of the Settlement Agreement required that Morris execute indemnity and security agreements in favor of RaveSim and Kirnaf We never received any further correspondence from [plaintiff's previous counsel] and remain unwilling in these circumstances to assign any possible claim to your client.

Hurley Decl., Ex. E.

Three months later, Morris's counsel replied, "[w]e believe your view on assignment is factually and legally incorrect. Moreover, it would be improper for us to advance a position that is directly contrary to our client's interests." Id., Ex. F. RaveSim's counsel responded reiterating that no assignment to Morris was ever made. Id., Ex. G.

Plaintiff argues that the RaveSim/Morris Settlement Agreement did not require plaintiff to obtain a formal, written assignment of RaveSim's claim against Cadence in order for plaintiff to file a claim against Cadence. Plaintiff asserts that the Settlement Agreement fails to require any written or

"executed," assignment to plaintiff of the claim against Cadence. Instead, the Settlement Agreement states that "RaveSim will assign its right to pursue such a claim against Cadence to Morris and Morris will have the right to pursue the claim and recover any damages from Cadence." RaveSim/Morris Settlement Agreement, p. 2, ¶ 1. In sum plaintiff argues that because RaveSim declined to sue Cadence and declined to seek a third-party assessment, with those actions, RaveSim "assigned" the Cadence claim to plaintiff.

I disagree and rely on the Oregon court's reasoning and holding in Springfield Int'l Restaurant v. Sharley, 44 Or. App. 133, 605 P.2d 1188 (1980), where the court held that "[a] contract to assign a right in the future is not an assignment." Id. at 140. This is precisely the situation at bar. The Settlement Agreement acted as a contract to assign to plaintiff a right in the future if certain conditions were satisfied. Without evidence of those conditions being satisfied, I find no assignment as a matter of right, or law.

Further, I reject plaintiff's argument that assignment occurred to him "as a matter of law" because contract law requires that conditions precedent be met before a party is entitled to performance of the contract. Porter v. Meier Chevrolet-Buick, Inc., 254 Or. 482, 484, 461 P.2d 527 (1969) ("Until the condition was met the contract did not come into

operative existence") (internal citations omitted). The Settlement Agreement clearly and unambiguously states that in the event the conditions precedent are met, "RaveSim will assign its right to pursue such a claim against Cadence to Morris and Morris will have the right to pursue the claim and recover any damages from Cadence." Murphy Depo., Ex. 17, ¶¶ I, O (emphasis added). Therefore, even if RaveSim waived every condition precedent, that only entitled plaintiff to an assignment from RaveSim, which RaveSim did not make and which plaintiff admits was not made. Morris Interrogatory Resp. No. 7 (Sitzman Decl., Ex. E at 5); Morris Depo. 27:5-20.

Moreover, the Ninth Circuit has held that "the assignees must come forward with evidence that the assignor meant to assign rights and obligations under the contracts." Britton v. Co-Op Banking Group, 4 F.3d 742, 746 (9th Cir. 1993). Again, I find no evidence that RaveSim intended to assign its claim against Cadence to the plaintiff without satisfying the conditions precedent as set forth in the Settlement Agreement.

Finally, regarding plaintiff's argument that RaveSim's failure to procure a third party review of the claim within the thirty-day deadline "waived" the condition precedent and acted to obviate the requirement that RaveSim assign its claims to plaintiff is not supported by law. Plaintiff relies on an ERISA case holding that where a claims administrator has not issued a

formal benefits determination within 45 days after receiving a claim, the relevant ERISA statute deems the claim denied, the administrative remedies exhausted, and allows the employee claimant to seek judicial review of the claim. Stefansson v. The Equitable Life Ins. Co., 2005 WL 2277486 (M.D. Ga.2005) (internal citations omitted). I find no analogous statutory scheme applicable to the case at bar, and therefore find plaintiff's reliance on Stefansson misplaced. I similarly reject plaintiff's arguments concerning an "equitable" or "constructive trust," finding no basis in law for these arguments.

Plaintiff next relies on the exception to the Cadence/Simutech Agreement's general statement of nonassignability as follows: no consent to assignment of any contract right is required where the assignment is "in connection with the transfer of all, or a substantial portion of [the assignor's] assets." Cadence/Simutech Agreement attached as Ex. A to First Amended Complaint.

Plaintiff asserts in his amended complaint that: (1) "at some point," Ravesim became the owner of all Simutech's assets, including all claims and causes of action which Simutech had against [Cadence];" and (2) because there did not exist any physical assets belonging to Simutech, the claims assigned or otherwise transferred under the Release constituted a "substantial portion of Simutech assets." Plaintiff's Amended

Complaint, ¶ 5; Plaintiff asserts that based on the plain meaning of the Assignment clause, the assignment of the claim against Cadence to the plaintiff falls squarely within the "exceptions" quoted above. Those exceptions permit the transfer of either "all" or a "substantial portion" of one party's assets, "or by reason of acquisitions, merger, consolidation, or operation of law," without requiring the other party's consent.

The Agreement further states that it shall be binding upon and "inure to the benefit of the successors and assigns" of the parties to the Agreement. Plaintiff asserts that the transfer of the right to sue Cadence that passed from Simutech to Kirnaf to RaveSim to plaintiff falls under one or more of the listed exceptions in the Agreement, which would permit plaintiff's third-party enforcement of the Agreement, and provide plaintiff with standing to bring the suit at bar.

____For purposes of this motion, defendant does not dispute that there was a valid transfer of assets between Simutech and Ravesim. I find no evidence, however, that RaveSim ever transferred any assets to plaintiff in connection with the purported assignment. In fact, RaveSim's former CFO, Terry Murphy, testified that RaveSim never transferred any assets to plaintiff. Murphy Depo., 81:19-25. Therefore, any assignment by RaveSim of a right or claim against Cadence was not "in connection with the transfer or all or a substantial portion of

[RaveSim's] assets." First Amended Complaint, Ex. A, ¶ 15.4. Plaintiff concedes that other than the alleged rights under the Cadence/Simutech Agreement, plaintiff received nothing. Morris Depo. 86:3-11. Terry Murphy testified that at the time of the Settlement Agreement, RaveSim had in excess of \$2.5 million in assets. Murphy Depo., at 51:4-53:4, 59:4-60:24; 81:22-25, 91:18-92:7. None of these assets were ever transferred to plaintiff. Therefore, I find no evidence that plaintiff's alleged assignment occurred "in connection with the transfer of all or a substantial portion" of RaveSim's assets.

CONCLUSION

Defendant's summary judgment motion (doc. 50) is granted and plaintiff's complaint is dismissed. Defendant's evidentiary objections in support of motion for summary judgment (doc. 72) are denied. Finally, defendant's request for oral argument is denied as unnecessary.

IT IS SO ORDERED.

Dated this 6 day of June 2006.

/s/ Ann Aiken
Ann Aiken
United States District Judge